



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-077/POI-2015/094-098

January 20, 2016

1. Faiz Rasool
S/o Ghulam Rasool,
R/o Fareed Town,
Gujranwala
2. The Chief Executive Officer
GEPSCO Ltd,
Head Office, G.T. Road,
Gujranwala
3. Saeed Ahmed Bhatti
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
4. Assistant Manager (Operations),
GEPSCO Ltd,
Fareed Town Sub Division,
Gujranwala
5. Electric Inspector
Gujranwala Region,
Munir Chowk, Near Kachehri Road,
Gujranwala.

Subject: Appeal Titled GEPSCO Vs. Faiz Rasool Against the Decision Dated 30.06.2015 of the Electric Inspector/POI to Government of the Punjab Gujranwala Region, Gujranwala

Please find enclosed herewith the decision of the Appellate Board dated 20.01.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-077/POI-2015/099

January 20, 2016


Forwarded for information please.

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)


Member Appellate Board


22/01/16
Dr. I. M. F.

Registrar
By No. 749
Dated 22-01-16



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-077/POI-2015

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Faiz Rasool, S/o Ghulam Rasool, R/o Fareed Town, Gujranwala

.....Respondent

For the appellant:

Saeed Ahmed Bhatti Advocate

For the respondent:

Nemo

DECISION

1. Through this decision, an appeal filed by Gujranwala Electric Power Company Limited (hereinafter referred to as GEPCO) against the decision dated 30.06.2015 of Provincial Office of Inspection (POI) is being disposed of.
2. As per facts of the case, the respondent is a domestic consumer of GEPCO bearing Ref No. 19-12213-1989500 with a sanctioned load of 2 kW under A-1 tariff.
3. The meter of the respondent was removed on 26.10.2010 on the suspicion of its tampering and was sent by GEPCO to Metering and Testing (M&T) department for checking. As per M&T report dated 26.10.2010, scratches were found on figures and sides of the name plate and the meter was found reversed through the block. Notice dated 03.11.2010 regarding the above discrepancy was issued by GEPCO to the respondent and a detection bill amounting to Rs.40,775 for 2,960 units for the period May 2010 to October 2010 (6 months) was charged to the respondent in February



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2011.

4. Being aggrieved with the above mentioned detection bill, the respondent filed a suit before the civil court and deposited Rs.20,400/- i.e. 50% of the disputed amount on the direction of honorable court. Subsequently an application dated 27.04.2012 was filed by the respondent for withdrawal of the civil suit and the honorable court allowed the withdrawal of the plaint vide its order dated 14.12.2012. According to the respondent, the civil suit was withdrawn pursuant to the judgment of the honorable Supreme Court of Pakistan reported vide PLD 2012 Supreme Court 371 where in it was held that for the theft committed through the metering equipment, the electric inspector has exclusive jurisdiction to entertain and adjudicate upon such matters. Later on, the detection bill was challenged by the respondent before POI vide his application dated 27.02.2013. GEPCO, inter alia, raised preliminarily objection regarding the jurisdiction of POI and contended that the respondent was involved in the theft of electricity and as such the jurisdiction of POI in such matter was excluded. However the objection of GEPCO was dismissed and POI held that the matter was within its jurisdiction. The matter was decided by POI vide the decision dated 30.06.2015 (hereinafter referred as the impugned decision), and concluded as under:

" In the light of above facts, it is held that the disputed detection bill for Rs.40775/- charged for 2960 units for the period from 05/2010 to 10/2010 is void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. The respondents are directed to over-haul the account of the petitioner accordingly. "

5. Being aggrieved with the impugned decision, GEPCO has filed the instant appeal under section 38(3) of the regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to the as the Act). GEPCO contended that the respondent was involved in the theft of electricity and the detection bill of Rs.40,775 for the cost of 2,960 units on the basis of connected load at site of 2.663 KW and at 50% load factor, for the period May 2010 to October 2010, charged to the respondent is quite legal valid and justified and the consumer is obliged under the law to pay the same. According to GEPCO, the application was moved by the respondent on 27.02.2013 whereas the same was decided on 30.06.2015 after expiry of the statutory period of 90 days as envisaged period under section 26(6) of the Electricity Act 1910. GEPCO pleaded that the impugned decision was ex-facie corium non-judice, ab initio void and without jurisdiction.
6. Notice of the appeal was issued to the respondent for filing reply/parawise comments which were



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not submitted.

7. Hearing of the appeal was conducted at Lahore on 19.12.2015 in which Mr. Saeed Ahmed Bhatti Advocate represented the appellant GEPCO but no one entered appearance for the respondent. The learned counsel for GEPCO reiterated the same arguments as given in memo of the appeal and contended that being a theft case it was beyond the jurisdiction of POI and therefore the impugned decision was void, unlawful and liable to be struck down. Reliance was made on PLD-2012 Supreme Court 371, PLD-2006 Supreme Court 328 and 2004 SCMR 1679. The learned counsel reiterated the ground that the POI failed to decide the matter within period of 90 days and as such the matter was to be referred to and decided by the Provincial Government and therefore the impugned decision was coram non-judice. In this regard, reliance was placed on 2006 YLR-2612 and PLJ-2015 Gujranwala 470.
8. We have heard arguments of the learned counsel for GEPCO and considered the record placed before us. It has been observed that:
 - i. The respondent's meter was removed and sent to M&T laboratory for checking which was found tampered. The respondent however was not associated in the said checking.
 - ii. Admittedly the theft of electricity has been alleged through tampering of the meter. Pursuant to the judgment of honorable Supreme Court of Pakistan reported in PLD-2012 Supreme Court 371, POI has the jurisdiction to adjudicate the matter in the case of dishonest consumption of energy through deliberate tampering with metering equipment or other similar apparatus. Objection of GEPCO regarding jurisdiction of POI is not valid and therefore dismissed. It is held that POI has rightly assumed the jurisdiction in the instant case.
 - iii. Admittedly the application moved by the respondent was disposed of by POI vide the impugned decision dated 30.06.2015 much after the expiry of the statutory period of 90 days as pointed out by GEPCO. It is relevant to mention that the matter was adjudicated by POI under section 38 of the Act which does not impose any restriction of time upon POI for deciding the matter. We are not inclined to agree with the objection of the learned counsel for GEPCO which is dismissed.
 - iv. We are inclined to agree with the analysis of POI that the consumption of the disputed period of May 2010 to October 2010 was higher than the preceding corresponding period



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of May 2009 to October 2009 and the succeeding corresponding period of May 2011 to October 2011. This fact does not support the allegation of GEPCO regarding theft of electricity by the respondent during the disputed period of May 2010 to October 2010.

- v. From the observations in foregoing paragraphs, we are inclined to agree with the conclusion of POI that the detection bill of Rs.40,775 of 2,960 units for the period of May 2010 to October 2010 is void, unjustified and of no legal effect, therefore the respondent is not liable to pay the same.

9. The upshot of the above discussion is that the impugned decision is in accordance with facts and law and we do not find any reason to interfere with the same. Therefore the impugned decision is upheld and resultantly the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 20.01.2016